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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/046,457      | 10/25/2001  | Jay E. Bauer         | 113611-002          | 4061             |

24573 7590 07/19/2004

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| EXAMINER |
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TRAN LIEN, THUY

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/046,457

**Applicant(s)**

BAUER ET AL.

**Examiner**

Lien T Tran

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed 5/6/04, applicant amended claim 1 to include the limitation of "kills at least some yeast on the skin". This limitation is not supported by the original disclosure. The specification does not disclose killing at least some yeast on the skin. Page 11 discloses "it is believed that some of the yeast on the superproofed skin may become inactive"; it does not disclose some yeast are killed. There is no definitive disclosure that some yeast on the skin are killed

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann et al (3630755).

Schiffmann disclose a method for proofing cut pieces of yeast-containing dough and dough product obtained from such method. The method comprises the steps of forming a dough by mixing a dry mix with water and yeast, forming the dough into shaped pieces and proofing the pieces by passing into a first zone for proofing and then into a second zone for further proofing. The temperature of the dough leaving the first zone is about 100 degree F and the temperature of the dough leaving the second proofing zone is about 120 degree F. The dough is removed from the proofing field before any portion of the dough has reached a temperature at which yeast is killed. The proofing is done in oven in which the ambient temperature is maintained at 100-130

degree F to insure the proper formation of a gas-retaining skin of the proofed dough. During the first proofing, appreciable gassing of the yeast take place and more gas is generated during the second proofing. The method is done by passing the dough pieces on a conveyor belt through the different zones. The dry mix has the composition as set forth on top of column 5. (see columns 2,5 and col. 6 lines 73-75)

Schiffmann et al do not disclose packaging the dough, pick up by the use of suction cups, package at frozen and refrigerated condition, package in presence of oxygen, adding ascorbic acid, the equipment as claimed and storing under freezing condition.

The limitation of "killings at least some yeast on the skin" does not define over Schiffmann et al because they heat the dough to within the temperature range claimed. Thus, any result obtained from such heating will obviously be present in the Schiffmann et al dough. As to the finally heated skin, the skin that is formed after the second proofing in a finally heated skin because Schiffmann et al do not disclose further proofing after the second one. The first and second proofings disclosed by Schiffmann et al are equivalent to the claimed proofing and superproofing. The yeast in the Schiffmann et al process is not killed, thus, it is obvious that live yeasts are still in the dough and that further expansion will take place upon baking. It is obvious gas pockets formed with the dough in the Schiffmann et al process because the dough comprises yeast and undergoes proofing. It would have been obvious to one skilled in the art to package the Schiffmann et al dough when the product is intended for commercial distribution. Such packaging is well known in the art. It would also have been obvious

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to one to store the dough under freezing condition to have long term storage. Such process is well known in the art as exemplified in the prior art to Benjamin et al and Sluimer submitted by applicant. Freezing or packaging under modified gas packaging are two known methods to extend the shelf life of food product. When the product is stored under freezing condition, modified gas packaging is not necessary and it is obvious the product can be packaged under atmospheric condition which inherently includes the presence of oxygen. It would also have been obvious to one skilled in the art to add ascorbic acid because it is a common dough additive and it also serves to give the product additional vitamin. As to the type of equipment used, it would have been obvious to one skilled in the art to use any type of equipment as long as the required steps can be carried out. Applicant has not shown any unexpected result or criticality in the claimed equipment. Since the Schiffmann et al product also has the skin on the outer surface, it is obvious that it can be picked up by suction cups. It would have been obvious to use any device to carry out the method; the type of equipment used does not affect the step or the outcome of the product. When the product is frozen, it would have been obvious to thaw the product in the refrigerator to prevent any possibility of microbial contamination.

In the response filed 5/6/04, applicant argues Schiffman teaches away from the present invention because each of the profiles shown in Fig. 3 shows the heated dough rising to only 115 degree F. This argument is not persuasive. While figure 3 shows temperature to only 115 degree F, Schiffman et al. clearly teach the temperature can include 130 degree F as claimed. For instant, the abstract discloses " the dough pieces

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are heated again for a period not exceeding 3 minutes to a temperature between 100-130 degree". Column 7 lines 1-2 discloses "temperatures are maintained at or below 130 degree F; the temperature can be maintained at 130 degree. Thus, a temperature of 130 degree F is clearly disclosed by Schiffman et al. Applicant argues Schiffman does not teach proofing and then superproofing to form a skin which includes at least some dead yeast. The first and second proofing steps of Schiffman et al equate to the claimed proofing and superproofing. With respect the dead yeast on the skin, Schiffmann et al heat the dough to within the temperature range claimed. Thus, any result obtained from such heating will obviously be present in the Schiffmann et al dough. Applicant further argues the skin in the dough is a finally heated skin and the skin of the Schiffman dough is not because the dough is placed into a fryer. The skin that is claimed is one that is obtained after two proofing steps. The frying or baking taught in Schiffman is the preparation of the dough to a final product; this subsequent cooking does not have anything to do with the formation of the skin. The claimed dough product is also further cooked. Thus, the skin that is formed after the second proofing in Schiffman et al is a finally heated skin. With respect to claim 11, applicant argues Schiffman does not teach or suggest packaging the product after it leaves zone C. Schiffman et al teach to prepare the dough to obtain a finished product after the dough is proofed. However, it would have been obvious to one skilled in the art to package the dough before it is further processed when desiring to make a ready to use dough. Such product is well known in the art as shown by the references submitted by applicant. Such ready-to-use dough is more convenient and enable consumer to use the dough

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whenever the need arises to obtain fresh baked product. Applicant further argues Schiffman does not teach freezing the dough. It would have been obvious to one skilled in the art to freeze the dough when long termed storage is intended. Applicant has pointed out why this would not have been obvious.

Applicant's arguments filed 5/6/04 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 14, 2004

  
LIEN TRAN  
PRIMARY EXAMINER  
